

## CHAPTER 8

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#### *Appendix – Sidewalk Policy*

#### **8.01 OFFICIAL CITY MAP.**

- (1) ADOPTED. The "Official City Map, Baraboo, Wisconsin", dated September 28, 1993 is hereby adopted by reference. The City Clerk shall file a certificate with the Sauk County Register of Deeds showing that the City has established an Official Map. The Official City Map shall be kept in the office of the City Engineer. See also §17.19(5).
- (2) AMENDMENTS: Ordinances numbered: 1557 01/23/90, 1759 08/09/94, 1761 08/09/94, 1784 01/24/95, 1995 01/19/2000, 2173 01/25/2005, 2187 03/08/2005, 2449 09/13/2016
- (3) ANNEXATIONS: Ord. #1155, 1178, 1184, 1191, 1196, 1199, 1200, 1073, 1308, 1396, 1416, 1437, 1472, 1473, 1476, 1482, 1516, 1517, 1550, 1567, 1570, 1635, 1679, 1697, 1744, 1745, 1752, 1753, 1770, 1776, 1777, 1781, 1791, 1792, 1801, 1816, 1817, 1822, 1829, 1882, 1888, 1892, 1899, 1912, 1953, 1954, 1966, 1967, 1973, 1974, 1979, 2038, 2041, 2042, 2043, 2054, 2084, 2122, 2124, 2126, 2167, 2174, 2176, 2195, 2197, 2229, 2249, 2259, 2263, 2267, 2271, 2293, 2297, 2368, 2397, 2453, 2461, 2573, 2606.
- (4) DETACHMENTS: Ord. #1683, #2491, 2508.

#### **8.02 ALTERING GRADES PROHIBITED.** No person shall alter the grade of any street, alley, sidewalk or public

ground or any part thereof unless authorized or instructed to do so, in writing, by the City Engineer.

#### **8.03 STREET AND SIDEWALK EXCAVATIONS AND OPENINGS.** (2033 11/14/2001, 2205 09/13/2005)

- (1) PERMIT REQUIRED. No person shall, without first obtaining a permit from the City Clerk's Office, make any opening in any street, alley, sidewalk or any public way within the City. The permit shall be void after 45 days unless work has commenced.
- (2) APPLICATION. Application for a permit shall be made on a form supplied by the City Clerk. All applications must be approved by the City Engineer or Street Superintendent. The application shall be accompanied by a signed agreement to save the City harmless from any liability arising from the work or activity covered by the permit, the fee provided in sub. (3) below and a written description of the work, including a sketch designating the trench location.
- (3) FEE. The permit fee shall be as provided in the City's Official Fee Schedule, Ch. 1, Subch. IV.
- (4) BOND REQUIRED. Before an excavation permit is issued, the applicant shall give a bond in the sum of \$5,000 with good and sufficient surety to be approved by the City Attorney conditioned, among other things, that said applicant will save and indemnify judgment, costs and expenses

which may in any way accrue against the City and save the City harmless against all liabilities, judgments, costs and expenses in consequence of granting such permit, including the restoration of any pavement and maintenance thereof for one year. An annual bond may be given covering all excavation work done by the principal which shall be conditioned as specified above in an amount determined by the City Attorney to adequately protect the City. This subsection shall not apply to utilities under the jurisdiction of the Public Service Commission.

- (5) **INSURANCE.** A certificate of insurance evidencing that the applicant has in force and will maintain during the term of the permit public liability insurance of not less than \$100,000 for any one person, \$300,000 for any one accident and \$50,000 for property damage.
- (6) **REGULATIONS GOVERNING EXCAVATIONS AND OPENINGS.**
- (a) Frozen Ground. No openings in the streets, alleys, sidewalks or public ways shall be permitted between November 15<sup>th</sup> and March 1<sup>st</sup> except where it is determined by the City Engineer to be an emergency excavation.
- (b) Protection of Public.
1. Every opening and excavation shall be enclosed with sufficient barriers, signing, and such other traffic control devices as may be required by the City Engineer or Street Superintendent, and in accordance with Section VI of the Manual of Uniform Traffic Control Devices. All machinery and equipment shall be locked or otherwise effectively safeguarded from unauthorized use when not being used by the permittee, his agents or employees. Except by special permission from the City Engineer or Street Superintendent, no trench shall be excavated more than One hundred fifty (150) feet in advance of pipe or conduit laying nor left unfilled more than three hundred (300) feet from where pipe or conduit has been laid.
  2. All necessary precautions shall be taken to guard the public effectively from accidents of damage to persons or property through the period of the work. Each person making such opening shall be held liable for all damages, including costs incurred by the city in defending any action brought against it for damages, as well as cost of any appeal, that may result from the neglect by such person or his/her employees of any necessary precaution against injury or

damage to persons, vehicles or property of any kind.

3. Unless otherwise approved, a minimum of one (1) lane of traffic in each direction shall be provided. Every effort shall be made on the part of the permittee to provide reasonable access to all properties adjacent to his/her project. In the event traffic is limited to less than one (1) lane in each direction, a flagman or temporary traffic control signal shall be provided so as to safely cycle traffic in each direction past the work area.
  4. The permittee shall perform the work in such a manner so as not to disrupt the flow of traffic in the area or endanger the safety of workmen or passersby. It shall be the responsibility of the permittee to prevent traffic backup during construction operation. The permittee shall notify the City Engineer or Street Superintendent twenty-four (24) hours prior to commencement of excavation of the location and extent of the excavation, unless the excavation is an emergency excavation as identified in §8.03 (9).
  5. When the operations will result in the loss of any utility service to private properties, the private properties shall be notified in writing or by personal contact at least twelve (12) hours prior to the loss of service, unless the operations are part of an emergency excavation as defined in §8.03 (9).
- (c) Pavement Removal.
1. Removal of existing pavement shall be to neat, straight lines. The permittee shall make a final saw cut in the existing pavement after backfilling. Excavations shall be kept to the minimum possible and acceptable for the convenience and safe performance of his/her work and in accordance with all applicable codes and regulations.
  2. If the pavement is damaged during excavation beyond the original saw cut lines, it shall be saw cut again along neat, straight lines. The finished saw cut shall leave a regular rectangular section for pavement replacement. Should the street opening occur within adjacent or close to an existing patch or require more than one (1) opening within a short distance, the permittee shall

identify and locate the existing patches or additional openings on the permit application form. The City Engineer or Street Superintendent shall, on the basis of an on-site inspection, approximate the boundaries of the pavement replacement area.

3. Pavement replacement areas with the long dimension in the direction of travel shall have the long dimensions parallel with the curb line or the direction of travel. Pavement replacement areas in concrete pavements shall be parallel with or at right angles to the direction of travel.
4. The City Engineer or Street Superintendent may order the permittee to remove and replace up to one (1) full lane width of pavement along the patched or excavated area. Special care shall be taken with concrete pavement to produce a vertical face on the existing concrete at the point of the saw cut to insure a full depth of concrete at the joint.

(d) Excavation.

1. Prior to starting excavation work, the contractor shall first contact Digger's Hotline to determine the location of underground facilities.
2. All excavated material shall be piled in a manner such that pedestrian and motor traffic is not unnecessarily disrupted. Gutters shall be kept clear or other satisfactory provisions made for street drainage, and natural watercourses shall not be obstructed.
3. Excavated material to be used for backfilling of the trench must be so handled and placed as to be of as little inconvenience as practical to public travel and adjoining tenants.

(e) Backfilling.

1. All backfill material shall be free from cinders, ashes, refuse, vegetable or organic matter, boulders, rocks or stones greater than eight (8) inches in their greatest dimension, frozen lumps or other material which, in the opinion of the City Engineer or Street Superintendent, is unsuitable.
2. In refilling the excavation, if there is not sufficient material excavated suitable for refilling the deficiency shall be made

up with trucked in material, approved prior to use by the City Engineer or Street Superintendent.

3. Wherever an excavation crosses an existing utility, pipe or other structure, backfill shall be carefully compacted in stages from the bottom of the excavation. Any sanitary sewer, storm sewer, water, telephone, natural gas or other service shall not be interrupted by the permittee. It shall be the permittee's responsibility to have the various utilities located and mark their facilities prior to excavation.
4. Mechanical compaction shall be used on all materials used for trench backfill. Each layer (12-inch maximum) shall be uniformly compacted to a dry density of at least ninety-five percent (95%) of the maximum dry density as determined by the Modified Proctor Test (ASTM-1557). Compaction or consolidation by flooding shall not be permitted.
5. All excavations shall be subject to testing by the City. Backfilled material not achieving the above compaction requirements shall be removed and recompactd by the permittee. The cost of any retesting shall be paid by the permittee.(2332 12/22/2009 repealed paragraph 6 on backfilling)

- (f) Notice. It shall be the duty of the permittee to notify the City Engineer or Street Superintendent and all public and private individuals, firms and corporations affected by the work to be done at least one (1) business day before such work is to commence. The City Engineer or Street Superintendent shall also be notified at least four (4) hours prior to backfilling and/or restoring the surface.

(g) Pavement Replacement.

1. Backfill material shall be left below the original surface to allow for 12 inches of three (3) inch crushed stone and four (4) inches of three-quarter (3/4) inch crushed stone, plus the thickness of the required pavement structure. If paving will not occur as part of the initial street restoration operation, the balance of the opening to the original surface elevation shall be backfilled with compacted three-quarter (3/4) inch crushed stone.

2. Bituminous pavement shall be placed the full depth of the existing pavement or three and one-half (3-1/2) inches whichever is greater. Bituminous pavement shall be placed in a maximum of a two inch base layer and a one and one - half (1 1/2) inch top layer, with each layer compacted to maximum density and shall consist of Wisconsin Department of Transportation Pavement Type E-1. The finished surface shall be smooth and free of surface irregularities and shall match the existing pavement and any castings or street appurtenances. Allowable deviations shall be no more than one-quarter (1/4) inch as measured with a ten (10) foot straight edge.
3. Concrete pavement shall be placed to the full depth of the existing pavement or seven (7) inches whichever is greater. Concrete used shall not contain calcium chloride. The surface shall be given a light broom finish. The edges shall be tooled to prevent spalling at the saw cut edge. The surface shall be evenly and completely sealed with a white-pigmented curing compound. The surface shall be protected from traffic for a minimum of three (3) days. Tie bars shall be installed as directed by City Engineer or Street Superintendent.
4. In emergency excavations during winter months when it is not possible to replace the removed pavement with a like material, the excavation shall be temporarily resurfaced with a minimum of three (3) inches of cold mix bituminous material. This temporary wearing surface shall be compacted and rolled smooth. These temporary wearing surfaces shall be removed and re-placed with material as specified above by not later than the following June 1<sup>st</sup>. except as provided above. Permanent pavements shall be replaced within sixty (60) days of the date of the permit.

(7) **EXCAVATION IN NEW STREETS LIMITED.** Whenever the City determines to provide for the permanent improvement or repaving of any street, such determination shall be made not less than thirty (30) days before the work of improvement or repaving shall begin. Immediately after such determination by the City, the City Engineer shall notify in writing each person, utility or other agency owning or controlling any sewer, water main, conduct or other utility in or under said street or any real property abutting said street, that all excavation

work in such street must be completed within thirty (30) days. After such permanent improvement or repaving, no permit shall be issued to open or excavate said street for a period of five (5) years after the date of improvement or repaving unless, in the opinion of the City Engineer, conditions exist which make it absolutely essential that the permit be issued. Every effort shall be made to place gas, electric, telephone and television cable lines in street terraces.

- (8) **PLUMBING PERMIT REQUIRED.** See §15.04 of this Code.
- (9) **EMERGENCY EXCAVATIONS AUTHORIZED.** In the event of an emergency, any person owning or controlling any sewer, conduit or utility in or under any street may take immediate proper emergency measures to remedy dangerous conditions for the protection of property, life, health or safety without obtaining an excavation permit; provided that such person shall apply for an excavation permit not later than the end of the next succeeding business day and shall not make any permanent repairs without first obtaining an excavation permit.
- (10) **CITY WORK EXCLUDED.** The provisions of this section shall not apply to excavation work done under the supervision of the City Engineer, Utility Superintendent, or Street Superintendent by City employees or contractors performing work under contract with the City necessitating excavations in City streets. (2318 08/25/2009)

#### **8.04 OBSTRUCTIONS AND ENCROACHMENTS.** (2183 02/22/05, 2423 10/14/2014)

- (1) **PROHIBITED.** No person shall encroach upon or in any way obstruct or encumber any street, alley, sidewalk, public grounds or land dedicated to public use, or any part thereof, or permit such encroachment or encumbrance to be placed or remain on any public way adjoining the premises of which he is the owner or occupant, except as provided in sub. (2) below.
- (2) **EXCEPTIONS.** The prohibition of sub. (1) above (on the placement of obstructions in streets) shall not apply to the following:
  - (a) Public utility encroachments duly authorized by State law or the Council.
  - (b) Temporary encroachments or obstructions authorized by permit granted pursuant to §66.045, Wis. Stats.
  - (c) Excavations and openings permitted under §8.03 of this chapter.
  - (d) Temporary Encroachment of Public Sidewalk.

1. **Purpose and Intent –** The purpose of this Section is to establish the standards and criteria for the issuance of encroachment permits granting the

privilege to temporarily place merchandise, furniture, benches, planters, flowers, sandwich board signs, flags, and other permitted items upon the public sidewalks for informational, decorative, and business enhancement purposes. The intent of these standards and requirements is to insure safe access and movement for pedestrians consistent with the American with Disabilities Act and to insure uniform placement, aesthetics, and maintenance while protecting City liability when such items are placed within the public right-of-way.

2. Permitted Items – Subject to the requirements in subsection 3, the following permitted items may be temporarily placed upon public sidewalks within districts or areas where retail business operations are permitted:

- a. Sidewalk furniture such as tables, chairs, benches, planters, and flower-pots, all of which must be movable; umbrellas may also be permitted in conjunction with tables and chairs.
- b. Display of goods and merchandise.
- c. Ornamentations such as clocks, statues, open for business flags (but not banners), seasonal decorations, decorative artwork, and similar items.
- d. A sandwich board sign.
- e. Newspaper vending machines.
- f. Soda and vending machines, other than newspaper vending machines, shall not be permitted.

3. Requirements – Placement of any permitted item identified in Subs.(d)2 shall be subject to the following general requirements:

- a. Only the owner or occupant of a building fronting upon a sidewalk shall be authorized to place a permitted item upon such sidewalk.
- b. The placement of all items shall provide clearances and pathways in conformance with the American Disabilities Act (ADA)

and any amendments, guidelines, and regulations adopted pursuant thereto. In particular, the following standards shall apply:

- [1] There shall be not less than a four-foot wide unobstructed accessible path of travel, excluding curb dimensions, and there shall be a sidewalk cross-slope no steeper than one in forty-eight (1 in 48). A vertical clearance of not less than 80 inches shall be maintained at all times. The path of travel shall be reasonable in location and continuous between adjacent properties. Winding pathways shall not be allowed.
- [2] No placement shall encroach upon or obstruct any required parking space(s), landscaped area, fire lane, fire hydrant, handicapped access ramp, or handicapped access route.
- [3] The placement of permitted items shall always maintain safe visibility of vehicular traffic and pedestrians and clear visibility and access to all traffic signs, control devices, and other safety installations.
- [4] Permitted items placed on the sidewalk and the surrounding sidewalk area shall be maintained in a state of cleanliness and good repair and shall not cause conditions of trash, litter, debris, noise, glare, dust, or other nuisance. Responsibility for such maintenance shall rest with the owner and/or occupant of the business storefront displaying the items.
- [5] Permitted items shall only be placed within the boundaries of the storefront of the business displaying the items. Unless otherwise approved, permitted items shall only be displayed during times when the

business displaying the items is open for business.

- [6] No sign or other item shall be attached to light poles, trees, or other public improvements. In special circumstances due to frontage limitations, a sign may be placed on the end of a public bench

c. Alcoholic beverages shall not be served, consumed, or possessed within or upon the sidewalk or the public right-of-way.

4. Encroachment Permit -

a. The placement of permitted items under this Section shall be subject to review and approval by the City Zoning Administrator prior to placement. If approved, an encroachment permit shall be issued setting forth any conditions of approval. The Zoning Administrator shall establish forms and procedures for implementing and enforcing the terms of this Section. Permits issued by the Zoning Administrator shall be issued annually covering the period from July 01 to June 30. A grid map showing how the sidewalk shall be used shall be included with each encroachment permit application.

b. A violation of an encroachment permit shall be a violation of this §(2)(d) and, in such event, the Zoning Administrator may revoke or suspend the permit.

c. Appeals from any decision of the Zoning Administrator, whether made by the business owner, adjoining property owner, or other aggrieved party, shall be filed with the City Clerk and submitted to the City Council's Administrative Committee accompanied by a recommendation from City Staff. Action by the Administrative Committee shall be final.

d. No permit shall be issued for use of public right-of-way until

satisfactory evidence is presented that the permittee has obtained general liability insurance coverage with an insurance company licensed by the State of Wisconsin naming the City as an additional insured in amounts not less than \$1,000,000 for bodily and personal injury sustained by any one occurrence and \$100,000 for property damage, and said insurance shall be primary insurance coverage for any damages to persons or property caused by reason of any accident or occurrence to any person or property arising from or growing out of the use of the encroachment permit. Such insurance coverage shall be maintained for so long as the permit is in effect.

e. Any permit granted under this section shall be deemed a privilege granted pursuant to §66.0425, Wis. Stats. By adopting this ordinance, the City expressly intends that the provisions of §66.0425(1), (2), (3), (4), (5), (6), and (8), Wis. Stats., (2001-2002) and as amended shall apply to the encroachment permit and permittee.

f. The failure to procure a current encroachment permit shall be a violation of 8.04(1) and such violation shall be subject to a forfeiture as provided in §25.04 of the City Code.

1. The goods and merchandise shall only be displayed during such times when the business displaying the items is open for business, and

2. The display shall only occur within the boundaries of the storefront of the business displaying the items, and

3. The display shall be at least four feet of open, clear, and unobstructed sidewalk.

(e) A mailbox placed within the right-of-way of any street, but outside of the paved portion thereof, provided that the placement of the

mailbox does not unduly interfere with vision along the street, and that its construction does not constitute a nuisance endangering the safety of vehicles operating along the street. As a consideration for the privilege to place a mailbox in the right-of-way for a street, in the event such mailbox is damaged as a result of the City's action to remove snow from the street, the City shall only be liable to repair or replace the mailbox with a standard mailbox and pole mount of the City's choosing, or reimburse the owner for the costs of a new mailbox and mounting up to a total of \$45.00. (2299 01/27/2009)

**8.05 SNOW AND ICE REMOVAL.** (1965 01/12/99, 2033 11/14/2000, 2180 02/08/2005, 2287 10/14/2008, 2541 01/28/2020)

- (1) **SIDEWALK SNOW AND ICE REMOVAL.** The owner or lessee of every lot or parcel of land in the City in front of or abutting upon a sidewalk shall clear the entire width of such sidewalk of snow and ice no later than 24 hours after such snow or ice has accumulated thereon. The owner or lessee of a lot or parcel abutting sidewalks on two intersecting streets shall remove all snow and ice from the sidewalks of both streets, including that portion of the sidewalks bordering the crosswalk, including the entire curb ramp, if any, through the snow plow line to the cleared street, regardless of the source of the snow or ice accumulation. In the event sidewalk snow or ice shall become frozen so hard that it cannot practically be removed, the owner shall keep the sidewalk effectively sprinkled with sand, salt, or other suitable substance in such manner as to prevent the ice from being dangerous, and shall promptly clean such sidewalk as soon as weather permits.
- (2) **SNOW NOT TO BE DEPOSITED ON PUBLIC WAYS; CREATION OF DOWNTOWN SNOW REMOVAL DISTRICT.**
  - (a) Except in the downtown snow removal district, no person shall deposit any snow on any public street or alley in the City unless such person shall, within one hour thereafter, cause such snow to be removed from such street or alley. Sidewalk snow may be deposited within the tree bank, but shall not be deposited in the street.
  - (b) A downtown snow removal district is hereby created within the following perimeter: Commencing at 1st Avenue and Broadway, thence east on 1st Avenue/Street to Ash Street; thence north on Ash Street to 3rd

Street; thence east on 3rd Street to East Street; thence north on East Street to 4th Street; thence west on 4th Street to Ash Street; thence north on Ash Street to 5th Street; thence west on 5th Street/Avenue to Birch Street; thence south on Birch Street to 3rd Avenue; thence east on 3rd Avenue to Broadway; thence south on Broadway to 1st Avenue, the point of beginning. The perimeter shall be considered to run down the middle of the street. Only property inside the described perimeter shall be considered a part of the district. Within the perimeter of the downtown snow removal district, snow removed from contiguous properties may be deposited at the curb line, for later pickup and disposal by the City.

- (3) **CITY ABATEMENT.** In the event the owner or lessee of any lot or parcel of land fails to comply with or violates the provisions of sub (1), above, or violates sub (2), above, the Street Superintendent or designee may summarily remove such snow and ice and cause the cost of said removal to be charged to the owner of the property from which said snow or ice has been removed, after first providing the property owner with an abatement notice pursuant to §10.07(2)(a) of the City Code. An abatement notice under this §8.05 need only be served once upon a property owner per winter season. If the charge is not paid within 30 days of the date of billing, an additional administrative charge of 10% of the charge shall be added to the amount due, plus interest shall accrue thereon at the rate of 1% per month until paid, and such charge shall be extended upon the current or next tax roll as a charge for current services as provided in §66.0627, Wis. Stats.
- (a) **Appeals.** A property owner may appeal the charge to the Administrative Committee by notifying the City Clerk within 14 calendar days of the date of the City's invoice to the property owner. The Administrative Committee shall hear the appeal at their next regularly scheduled meeting, time permitting, and the decision shall be final. The Administrative Committee may consider the following when determining the merits of the appeal:
  - i. Whether the snow/ice warranted an abatement

- pursuant to subs (1) or (2), above, and
- ii. Whether the City provided the property owner with a notice of abatement, and
- iii. Whether the property owner took reasonable steps to abate the nuisance as required by this Section, and
- iv. Whether the charge invoiced to the property owner was reasonable.

- (4) VIOLATIONS. Any person violating any of this §8.05 shall be subject to a forfeiture as provided in §25.04 of the City Code. Each day any violation of this subsection continues shall constitute a separate offense. Prosecution under sub (1) or sub (2), above, shall not bar the City from proceeding under sub (3), above, nor shall proceeding under sub (3), above, bar prosecution under sub (1) or sub (2), above.

**8.06 SALE OR DISPLAY OF MERCHANDISE PROHIBITED.** Except for sales permitted by Statute or other sections of this Code, no person shall display, sell, or offer to sell, on any street, sidewalk, alley, City parking lot, or other public place within the City, anything of value or service of any kind, except in connection with a Citywide enterprise or promotion of community trade.

**8.07 UTILITY EXTENSIONS REQUIRED.** All utilities and sewer and water mains and service laterals to the abutting property shall be installed before any street is permanently surfaced or resurfaced.

#### **8.08 PUBLIC IMPROVEMENTS AND ASSESSMENTS.**

##### **(1) GENERAL APPLICATION.**

- (a) The installation of any public improvement shall be an exercise of the police power of the City as may from time to time be determined by the Council and the property served shall be assessed pursuant to the provisions of §66.0703 and §66.0701, Wis. Stats., except sidewalks may also be assessed pursuant to the provisions of §66.0907, Wis. Stats. (See also Ch. 18 of this Code relating to required improvements in subdivisions). (1859 03/12/96)
- (b) Unless otherwise determined by the duly adopted resolution of the Council, the total cost of any public improvement to be paid in whole or in part by special assessment shall include the actual direct and indirect cost incurred by the City and reasonably attributable thereto including, but not limited to, materials, supplies, labor, equipment, land acquisition, site preparation

and restoration, damages occasioned by the public improvement, interest on bonds or notes issued in anticipation of the collection of assessments, a reasonable charge for engineering, legal and administrative costs, and other costs and charges allowed by law. (2004 02/22/2000)

- (c) The total assessment for any public improvement shall be based upon the total costs, as defined in par. (b) above, and shall be apportioned among the individual parcels benefited. Such apportionment shall generally be computed on a lineal frontage basis unless the Council otherwise determines that extenuating circumstances require a different method of assessment.

##### **(2) SEWER AND WATER MAIN.**

- (a) All sewer and water main extensions shall be constructed by the City in accordance with specifications established by the Public Safety Committee.
- (b) Special assessments for all sewer and water main extensions shall be levied at 100% of the total cost of construction.

##### **(3) STREETS**

- (a) Streets shall be constructed by the City in accordance with specifications established by the Public Safety Committee.
- (b) Special assessments for all new streets hereinafter constructed shall be levied at 100% of the total cost of construction. The cost of maintaining and resurfacing existing streets shall be borne by the City.

##### **(4) CURB AND GUTTER.**

- (a) Curb and gutter shall be installed by the City in accordance with the specifications established by the Public Safety Committee.
- (b) Any owner of unimproved land abutting on an existing opened street who shall improve said property by erecting buildings thereon shall be required to install curb and gutter and sidewalk grade along the street abutting said land where curb or walk do not exist. No building permit shall be issued until application for such curb and gutter and sidewalk grade has been made. The finished lawn or surface grade shall conform to the sidewalk grade.
- (c) Special assessment for all new curb and gutter shall be levied at 100% of the total cost and replacement curb and gutter shall be levied at no cost to the property owner.



(5) SIDEWALK CONSTRUCTION  
AND REPAIR. (1862 04/16/96) (2470  
10/10/2017)

*The City's current sidewalk policy is set forth as an Appendix to Chapter 8 and can be found at the end of this Chapter. The sidewalk policy may be amended by resolution of the Common Council.*

- (a) Sidewalk Standards. Sidewalks shall be located in such places and at such grades as designated by the Council. The Council shall from time to time adopt resolutions specifying where sidewalks shall be constructed and shall order sidewalks to be laid in accordance therewith. All sidewalks installed within the City, whether new, reconstructed replaced or repaired shall be constructed in accordance with the specifications and standards established by the Public Safety Committee. Unless authorized by the Council, construction costs for new, replaced, reconstructed or repaired sidewalks shall be 100 percent specially assessed against the properties on which the sidewalk abuts as provided in this chapter.
- (b) Sidewalk Priority Plan for Residential Districts. (2010 05/09/2000) The City shall establish and maintain a sidewalk priority program for the City. By January 1<sup>st</sup> of each year, the City Council shall adopt, after recommendation by the Public Safety Committee, a three-year sidewalk construction priority plan for the City that is consistent with the intent of the City's Sidewalk Policy.
- (c) Sidewalk Inspection Districts. (2011 05/09/2000, 2313 07/28/2009) Commencing on July 1, 2009, the City shall be divided into eight sidewalk districts and a downtown district. At least once every eight years thereafter, and annually in the downtown district, sidewalks in each district shall be inspected and the Public Safety Committee may, pursuant to such inspection or for public health, safety and general welfare reasons, order the reconstruction, repair or removal and replacement of any sidewalk determined to be unsafe, defective, or insufficient.
- (d) Any person who fails, neglects or refuses to install or repair sidewalks in accordance with the terms of a sidewalk agreement executed by such person shall be subject to a penalty as provided in §25.04 of this Code. Each day that a violation of this section continues shall be deemed a separate offense. In addition to any other penalty imposed by this subsection for the failure, neglect or refusal of any person to comply with the provisions of a sidewalk agreement executed pursuant to §8.08(5)

of the Code, the City shall have the right to install the required side-walk improvements and, in such case, 100% of the total cost thereof shall be levied as a special tax against the lot or parcel of land abutting such sidewalk improvements. (2012 05/09/2000)

**8.09 DRIVEWAYS.**

- (1) PERMIT REQUIRED. No person shall construct any new driveway across any sidewalk or curbing without first obtaining a driveway permit from the City Engineer. The applicant for a driveway permit shall file the application with the City Engineer and furnish a drawing designating his property lines, the location and width of the proposed driveway and the location of any driveway and street intersection within 150 feet of the proposed driveway.
- (2) FEE. The fee for the driveway permit shall be as provided in the Official Fee Schedule and shall accompany the application.
- (3) SPECIFICATIONS FOR DRIVEWAY CONSTRUCTION.
  - (a) Width. No driveway shall exceed 20 feet in width at the street edge of the sidewalk in residential districts and 32 feet in commercial and industrial districts unless approved by the Public Safety Committee. All driveways shall be constructed in accordance with specifications established by the Public Safety Committee.
  - (b) Interference With Intersections and Driveways Prohibited. The nearest boundary of any driveway shall be at least 15 feet from a corner crosswalk or intersecting street line extended to curb line. A driveway must be a minimum of 5 feet from the nearest boundary line of alley and driveway front on the same street. Any driveway may, subject to other limitations of this section, be constructed at any angle to the pavement edge from 45 degrees shall be permitted.
  - (c) Location on Lot Regulated. No entrance shall be closer than 3 feet to adjacent property lines, provided, however, that in cases of practical difficulty or unnecessary hardship, the Public Safety Committee may reduce such requirement. No driveway shall be so constructed that any part of the same extends in front of property belonging to a person other than the person applying unless both property owners sign a joint application for a permit.
  - (d) Number of Driveways Limited. No more than one driveway shall be constructed for any residential lot or premises without the approval of the Public Safety Committee.

- (e) Workmanship and Materials. All driveway entrances, approaches, and parking areas shall be paved. Entrance and approach paving shall be in accordance with the requirements for sidewalk construction in §8.08(5) of this chapter. Parking areas shall be paved with concrete, asphalt, or some other dust-free and track-free surface approved in advance by the City Engineer. This requirement shall apply to new driveway construction and to driveways substantially removed and replaced after August 26, 2009. When curb or gutter is removed, the new connection shall be of equivalent acceptable material and curb returns provided or restored in a neat, workmanlike manner. Driveway surfaces shall connect with the street pavement and sidewalk in a neat, workmanlike manner. (2314 08/25/2009)
- (4) APPEAL. Any person aggrieved by a determination of the City Engineer or the Public Safety Committee may appeal, in writing, to the Council within 10 days of such determination. Upon making a determination that public interest and safety are not adversely affected, the Council may grant the driveway permit.

#### **8.10 SPECIAL ASSESSMENT PROCEDURE.**

[Historical Note: On October 5, 1993 the City adopted Ordinance No. 1703 and thereby established a special assessment procedure for projects in excess of \$100,000.00 made pursuant to a written contractual arrangement with a Developer. On November 3, 1993, the City repealed Ordinance No. 1703 by adopting Ordinance No. 1707. Ordinance No. 1703 was never utilized by the City and no contracts were executed pursuant to said ordinance prior to its repeal.]

- (1) SPECIAL ASSESSMENT METHOD. In addition to other methods provided by law, special assessments for any public work or improvement or any current service may be levied by alternate means. The Council hereby elects to levy such special assessments as provided in this section. It is the intent of the City to preserve the right to levy special assessments for any public work or improvement at any time to the fullest extent allowed by law. Therefore, in all cases, the Council may adopt a resolution determining to finance any public work or improvement by special assessments at any time either before or after completion of the public work or improvement. (2078 03/26/2002)
- (2) PRELIMINARY RESOLUTION. Whenever the Council shall determine that any public work or improvement shall be financed in whole or in part by special assessments levied under this section, it shall adopt a preliminary resolution setting forth the following:
  - (a) Its intent to exercise its police powers for the purpose of levying special assessments for the stated municipal purpose.
- (b) The limits of the proposed assessment district.
- (c) The time, either before or after completion of the work or improvement, when the amount of such assessments shall be determined and levied.
- (d) The number of installments in which the special assessments may be paid, or that the number of installments will be determined after the public hearing required by sub. (4) below, and will be included in the final resolution.
- (e) The rate of interest to be charged on the unpaid installments or that the rate of interest will be determined after the public hearing required by sub. (4) below, and will be included in the final resolution.
- (f) The terms on which any of such assessments may be deferred while no use of the improvement is made in connection with the property, or that such terms will be determined after the public hearing required by sub. (4) below, and will be included in the final resolution.
- (g) The City Engineer shall prepare a report as required by sub. (3) below.
- (3) REPORT OF CITY ENGINEER. Whenever the Council, by preliminary resolution, directs the City Engineer to prepare a report, the City Engineer shall prepare a report consisting of the following:
  - (a) Preliminary or final plans and specifications for the public work.
  - (b) An estimate of the entire cost of the proposed work or improvements, except that when the Council determines by preliminary resolution that the hearing on such assessments shall be held subsequent to the completion of the work or improvements, the report shall contain a statement of the final cost of the work, service or improvements in lieu of an estimate of such costs.
  - (c) A schedule of the proposed assessments.
  - (d) A statement that each property against which the assessments are proposed has been inspected and is benefited, setting forth the basis of such benefit.
  - (e) Upon completion of the report, the City Engineer shall file a copy of the report with the City Clerk.
- (4) INCORPORATION OF STATUTORY PROVISIONS. The provisions of §66.0703, Wis. Stats., including those related to notice,

hearing and the adoption of a final resolution, shall, to the extent not inconsistent with this section, apply to special assessments levied under this section.

- (5) LIEN. Every special assessment levied under this section shall be a lien against the property assessed from the date of the final resolution of the Council determining that amount of such levy.

#### **8.11 MOVING BUILDINGS.**

- (1) PERMIT REQUIRED. No person shall move any building into or within the City without a permit from the Building Inspector upon 30 days' notice. The denial of a moving permit by the Building Inspector may be appealed to the Board of Zoning Appeals as provided in Ch. 17 of this Code.
- (2) APPLICATION. Application for a permit shall be made on forms provided by the Building Inspector.
- (3) PERMIT FEE. For any building that is moved by use of heavy moving trucks or rollers, the fee shall be as provided in the Official Fee Schedule. For any building that is moved by the use of common carrier trucks or skids, the fee shall be as provided in the Official Fee Schedule. Such fees shall not include the fee for a building permit to rebuild or alter the building upon its new location within the City.
- (4) BOND REQUIRED. Before a permit is issued, the mover must give a bond in the amount of \$10,000 with good and sufficient sureties to be approved by the City Attorney conditioned that the mover shall save the City harmless from any liability arising out of the move and shall restore any street damaged by the move.
- (5) INSURANCE REQUIRED. Before a moving permit shall be issued, the applicant shall submit to the Building Inspector a certificate of insurance evidencing that the applicant has in force and will maintain during the term of the permit public liability insurance of not less than \$100,000 for any one person, \$300,000 for any one accident and \$50,000 for property damage.
- (6) POLICE ESCORT SERVICE. The Police Department shall provide escort service at the request of the building mover. The first hour of escort service shall be provided without charge and each hour or fraction thereof thereafter shall be billed at the current wage rate, including fringes, per officer. The estimated amount of the escort fee shall be paid with the permit fee.
- (7) NOTICE TO UTILITIES. Prior to the issuance of said permit, the owner or mover shall certify that he has notified all public utilities whose lines or poles may be interfered with during the movement of the building. Such utilities shall take whatever

steps are necessary to permit the building to be moved without damage to its lines and poles and may charge the permittee the cost thereof.

- (8) INSPECTION AND REPAIR OF STREETS AND HIGHWAYS. Every person receiving a permit to move a building shall, within one day after reaching its destination, report that fact to the Street Superintendent. The Superintendent shall thereupon inspect the streets and highways over which said building has been moved and ascertain their condition. If the moving of said building has caused any damage to the streets or highways, the house mover shall forthwith place them in as good condition as they were before the permit was granted. Upon failure of the house mover to do so within 10 days thereafter to the satisfaction of the Superintendent, the City shall repair the damage done to such streets and highways and hold the sureties of the bond given by the house mover responsible for the payment of the same. (2033 11/14/2000)

#### **8.12 HOUSE AND BUILDING NUMBERING SYSTEM ESTABLISHED. (1933 03/10/98)**

- (1) BUILDING NUMBERING CHART. All lots, parts of lots and parcels of land in the City shall be numbered in accordance with the Building Numbering Map on file in the office of the Building Inspector. All newly plotted lots shall be numbered to conform to the general scheme of numbering as shown on said Map.
- (2) APPLICATION. Applications for house and building numbers shall be made to the Building Inspector. The Building Inspector shall give the applicant a certificate stating the number assigned and shall enter the number assigned on the Building Number Map.
- (3) NUMBERING REQUIRED. (1933 03/10/98)
  - (a) Existing Buildings. By July 1, 1998, the owner of every existing house, dwelling unit, apartment building, condominium unit, business establishment, industrial establishment, or other building in the City shall cause to be installed the numerals indicating the number assigned to each building in compliance with the City's numbering system and with §(4)(b) below. If the front entrance to the building is clearly visible from the frontage street at all times, the assigned numbers shall be attached securely or applied to the building within 5 feet of its front entrance or directly above the garage door of a garage which is attached to or a part of the principal building and which faces the frontage street. If the Building Inspector determines that the assigned numbers are not clearly visible from the frontage street when such numbers are located on the front of the principal building or the garage, the numbers shall be displayed in a manner so as

to be clearly visible from the frontage street at all times and the Building Inspector shall be authorized to order the appropriate method and site for the display of the assigned numbers.

- (b) New or Remodeled Buildings. Prior to the completion of a new or remodeled building the owner thereof shall cause the assigned numbers to be attached or erected in accordance with §(4)(a) below. No occupancy permit shall be issued for a new or remodeled building unless the building complies with the City's numbering system and with §(4)(a) below.

- (c) Private Developments. By July 1, 1998, the owner of an existing or new private development, such as a condominium, apartment complex, or other residential or commercial development with one or more buildings fronting on a privately owned street or right-of-way, shall cause to be installed and maintained private street name signs at all intersections of private streets and public streets. Each private street sign shall be installed in accordance with the specifications for the design, manufacture, and installation of public street signs. The owner of every existing building fronting on a private street shall cause to be installed and maintained the numerals indicating the number assigned to such building by the Building Inspector in accordance with the City's numbering system and with §(4)(b).

(4) **NUMBERING STANDARDS.**

- (a) New or Remodeled Buildings. This subsection shall apply to all new or remodeled buildings in the City. Only numerals shall be used to indicate the number of a building. The numerals shall be no less than 4 inches in height and shall be attached or applied horizontally. The numerals shall be bright metal or plainly painted so as to be clearly distinguishable from the underlying building and clearly readable from the public or private street upon which the building fronts. The numerals shall be located no higher than the first or ground floor of the building. Each residential building shall be assigned its address off the street upon which the residence fronts. Each commercial building shall be assigned its address off the street from which the building gains primary access to the property. Commercial buildings in the Central Business District with any entrance in the rear of the building shall display the numerals on the front and rear of the building. Apartment buildings shall display the numerals on the front of the building and, where a primary or secondary entrance to the apartment is located in the

rear of the building, the numerals shall be placed at the front entrance and at the rear entrance to the building. In all cases, the owner of the building shall be responsible for maintaining such numbering in a good state of repair and properly affixed or erected as provided in this section.

- (b) Existing Buildings. This Subsection shall apply to all existing buildings in the City. Existing buildings which as of July 1, 1998, have attached or applied to the building numerals indicating the correct number assigned to the building in accordance with the City's numbering system, shall comply with the numbering standards set forth in §(4)(a), except that existing numerals may be retained if only numerals are used to indicate the number of the building and the numerals are no less than 2.5 inches in height and are applied or attached horizontally. If existing numerals are replaced any time after July 1, 1998, the new numerals shall comply in all respects with the provisions of §(4)(a).

- (5) **ENFORCEMENT AND PENALTY.** The Building Inspector shall be authorized to establish uniform standards and procedures for implementing the provisions of this section. The Police Department, the Fire Department, and the Building Inspector shall be authorized to enforce the provisions of this section. Any person who violates, disobeys, neglects, omits, or refuses to comply with, or who resists the enforcement of this section shall be subject to a penalty as provided in §25.04 of this Code.

**8.13 PUBLIC TREES, SHRUBS REGULATED**

- (1) **APPOINTMENT.** The Baraboo and Parks Recreation Commission shall govern the City's Forestry Program and shall appoint the Director of Parks, Recreation and Forestry, or designee, to direct, manage, supervise and control the planting, maintenance, removal and protection of trees and shrubs in the City of Baraboo, including other duties of an urban forestry program.
- (2) **PUBLIC TREES, SHRUBS DEFINED.** For the purposes of this Section, public trees and/or shrubs shall mean all trees and shrubs on or in that part of every street, the grade of which has been established, lying between the lot line and the curb, or in the center or side lots in all boulevards, tree banks and parkways, and in all public parks or grounds belonging to the City or on any other public right-of-way.
- (3) **PERMIT REQUIRED.** No persons shall plant, transplant, remove, move, spray, brace, trim, prune, cut above or below ground, disturb, alter, perform surgery on, or cause, permit or allow such acts to be done by others, on any public tree or shrub within the City without first

obtaining a permit therefor from the City Forester. Such permit shall be subject to any conditions for the protection of life and property imposed by the City Forester. The City Forester may issue a pruning permit on an annual basis to any public utility corporation operating a business within the City or to a licensed arborist. No person shall do, or cause to be done by others, any of the following acts, without first obtaining a written permit from the City Forester:

- (a) Secure, fasten or run any rope, wire, sign, unprotected electrical installation or other device or material to, around, or through a public tree or shrub.
- (b) Break, injure, mutilate, deface, kill or otherwise destroy any public tree or shrub.
- (c) Cause or permit any fire to burn where it will injure any public tree or shrub.
- (d) Cause or permit any toxic chemical, gas, smoke, salt brine, oil, or other hazardous substance, as identified by the Wisconsin Department of Natural Resources under §291.05, Wis. Stats., to be spilled, discharged, drained or deposited upon or about any public tree or shrub.
- (e) Lay any drive within 10 feet of any public tree or shrub.
- (f) Excavate any ditch, tunnel or trench within 5 feet of any public tree or shrub provided that any public utility corporation may auger under a public tree or shrub and excavate to within 5 feet of any public tree or shrub, but such public utility shall be liable for any injury or damage caused to any public tree or shrub, and if any public tree or shrub is permanently damaged due to the acts of a public utility corporation, it shall be removed, including the stump, and shall be replaced by a tree at least 10 feet tall, or as otherwise approved by the City Forester, all at the expense of the utility.
- (g) Erect, alter, repair or raze any building or structure without placing suitable guards around all nearby public trees or shrubs that may be injured by such operations.
- (h) Knowingly permit or allow any unprotected electric service wires to come in prolonged contact with any public tree or shrub.
- (i) Remove any guard, stake or other device or material intended for the protection of any public tree or shrub.
- (j) Block, obstruct or close any open space above the base of any public tree or shrub thereby preventing or reducing access of air, water or fertilizer.

(k) Plant any tree or shrub that grows to a mature height in excess of 30 feet where overhead electrical utility wires exist.

(l) Plant any tree or shrub that will obtain a mature height of 35 to 50 feet in poorly drained soils on public property.

(m) Plant any tree closer than the distance recommended by the specifications for the tree species involved.

(n) Plant any of the following trees on public property:

- 1. Black walnut - *Juglans nigra* L.
- 2. Butternut - *Juglans cinerea* L.
- 3. Northern Catalpa - *Catalpa speciosa* warder.
- 4. Female Box Elder - *Acer Negundo* L.
- 5. Elm of any variety of the genus *Ulmus* L.
- 6. Willows of any variety of the genus *Salix* L.
- 7. Black Locust - *Robinia pseudoacacia* L.

(4) EXCEPTIONS. No permit shall be required to cultivate, fertilize or water public trees or shrubs.

(5) TRIMMING OF PUBLIC TREES AND SHRUBS REGULATED.

(a) All equipment used for pruning or trimming of public trees shall be disinfected after each tree is completed to prevent any spread of disease.

(b) All pruning or trimming of public trees shall be done in accordance with the most recent addition of Pruning Standards for Shade Trees adopted by the National Arborist Association on file in the office of the City Forester.

(c) Trees along public right-of-ways, or private premises adjacent to public right-of-ways or public areas, shall be pruned or trimmed so that the lowest limbs or branches are at a minimum 14 feet above the ground. The Forester may waive the provisions of this section for newly planted trees if he determines they do not interfere with public travel or endanger public safety.

(d) Private trees extending over a sidewalk shall be trimmed to keep a minimum of an 8-foot clearance below the lowest branch.

(6) RESERVED.\*

(7) OBSTRUCTION OF VIEW AT INTERSECTIONS PROHIBITED. After August 13, 1996\*, no person shall plant or permit to be planted any tree, shrub, plant, or any other obstruction greater than 24\* inches high in any

visual clearance triangle, or which may obstruct the view of an operator of a vehicle or bicycle approaching an intersection. The City Forester may order the removal of any tree, shrub, or plant which is located in any visual clearance triangle or which, in his judgment, may obstruct the view of the operator of a vehicle or bicycle at any intersection in the City. (See also §10.05(4) and Vision Clearance §17.39 of this Code.) (1879 08/13/96)

(\*City Attorney Note: On August 13, 1996, the Council completely revised Subchapter 1, Chapter 17 of the City Zoning Code by Ordinance 1879. In the new Zoning Code the term "vision clearance" is defined thereby repealing the definition of this term formerly found at s.8.13(6). The revised Zoning Code also decreased the permitted height of objects in the vision clearance triangle from 36 inches to 24 inches. Thus, between July 1, 1986 and August 13, 1996, the permitted height of objects in the vision clearance triangle is 36 inches and effective August 13, 1996, the permitted height is 24 inches.)

**8.14 LEASE UNDER BROADWAY STREET GRANTED TO SAUK COUNTY.** (1794 03/28/95)

WHEREAS, Sauk County is the owner of lands fronting on Broadway Street in the City between Third Avenue and Fourth Avenue and the Sauk County Courthouse complex is presently situated on the east side of Broadway Street and the County is constructing a new County building on the west side of Broadway Street and the County has requested that the City grant it permission to construct an underground concourse beneath Broadway Street connecting the two public facilities and both buildings serve the whole public of the City of Baraboo and Sauk County and by connecting the two facilities by an underground concourse citizens of the City of Baraboo and Sauk County, as well as the general public, will be able to go from one facility to the other safely, efficiently and conveniently, and the underground concourse will further improve the efficiency and effectiveness of the services provided by Sauk County to the citizens of Baraboo and to the general public thereby reducing general property taxes in the County and this Council has determined that for all of the foregoing reasons it is in the best public interest and the whole public of Sauk County will be better served if the City grants the County a lease under Broadway Street to construct the underground concourse between the two County owned public facilities

- (1) **AUTHORITY GRANTED TO ENTER INTO UNDERGROUND LEASE WITH SAUK COUNTY.** The Common Council shall be empowered to enter into an agreement with the

Sauk County Board of Supervisors thereby leasing to Sauk County sufficient space under Broadway Street between Third Avenue and Fourth Avenue for the purpose of constructing, maintaining and using an underground concourse connecting the Sauk County Courthouse located on the east side of Broadway Street to the Sauk County Resource Building located on the west side of Broadway Street for a term of 99 years, and which lease shall be renewable for successive 99 year terms or so long as Sauk County is the owner of the two facilities connected by the underground concourse and so long as the use of the underground concourse does not interfere with the free and unobstructed use of the surface of the Broadway Street right-of-way by the City and the general public. This lease is granted pursuant to the provisions of §66.048(4), Wis. Stats. (1993-94). This section further releases Sauk County from the specific requirements contained in §66.045(2), Wis. Stats. (1993-94) regarding the removal of the concourse upon 10 days' notice and the requirement to post a bond. The Common Council shall be authorized to include in the lease with Sauk County such other terms and conditions as the Council determines to be in the best public interest.

**8.15 VEGETATIVE MATERIAL NOT TO BE DEPOSITED IN STREET.**

Vegetative materials, including but not limited to leaves, brush, branches, and limbs, shall not be placed upon the paved portion of a street or alley. Any person violating this subsection shall be subject to forfeiture as provided in §25.04 of The City Code. Each day any violation of this subsection continues shall constitute a separate offense. (2340 06/22/2010)

**8.16 OCCUPATION OF THE PUBLIC RIGHT-OF-WAY.**

**Findings and Purpose.** In the exercise of its police powers, the City has priority over all other uses of the public right-of-way. The City desires to anticipate and minimize the number of permanent and semi-permanent obstructions and occupations in the public right-of-way, including utility facilities, to ensure that public right-of-ways remain available for public services and safe for public use. Right-of-way users who obstruct or occupy the right-of-way will bear a fair share of the financial responsibility for the integrity of the right-of-way. This ordinance is in addition to and should be used in conjunction with §8.03, Baraboo Municipal Code, as applicable, and differs from §8.04, Baraboo Municipal Code, as the regulations contained in this section are for obstructions and occupations that are not intended to be temporary. This ordinance shall not take precedent over state statute, and any conflicting term in this ordinance with state statute shall result in said term being effectively struck from this ordinance. (2462 07/25/2017)

- (1) **DEFINITIONS.** The following definitions apply in this ordinance. References to "sections" are, unless otherwise specified, references to sections in this ordinance. Defined terms remain defined terms

whether or not capitalized.

- (a) **APPLICANT** means any person applying for a permit.
- (b) **CITY** means the City of Baraboo.
- (c) **DEPARTMENT** means the City's Department of Planning and Zoning.
- (d) **DEPARTMENT INSPECTOR** means any person authorized by the Department to carry out inspections relating to the provisions of this chapter.
- (e) **EMERGENCY** means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property, and/or (2) requires immediate repair or replacement in order to restore service to a customer.
- (f) **FACILITIES** means any object including, but not limited to, equipment owned, operated, leased or subleased in connection with the operation of a service or utility service, and shall include, but is not limited to, poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, lines and other structures and appurtenances, that is designed to or will permanently or semi-permanently obstruct or occupy a right-of-way.
- (g) **IN**, when used in conjunction with "right-of-way," means over, above, in, within, on or under a right-of-way.
- (h) **LOCAL REPRESENTATIVE** means a person primarily located in the state of Wisconsin authorized by a Registrant to accept service and to make decisions for the Registrant regarding all matters within the scope of this chapter. If the Registrant is primarily located within the state of Wisconsin, a Local Representative is not required.
- (i) **OBSTRUCT** means to place any facility in a right-of-way as to hinder free and open passage over/under on or in that or any part of the right-of-way, or to limit the ability of a person to view past any part of that right-of-way.
- (j) **OCCUPY** means a facility that is located above, on, in, or below the boundaries of the public rights-of-way.
- (k) **PERMIT** means a permit issued by the Department allowing for the obstruction and/or occupation of a right-of-way pursuant to the terms of this chapter.
- (l) **PERMITTEE** means any person to whom a permit to obstruct or occupy a right-of-way has been granted by the City under this

chapter. The Permittee and Registrant may be the same person or different people (i.e., the Permittee may be a locally based person doing work on behalf of an out-of-state Registrant).

- (m) **PERSON** means a municipality, corporation, company, including a "Company" defined as § 182.017(1g)(b), Wis. Stat., association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.
  - (n) **PSCW** means the Public Service Commission of Wisconsin.
  - (o) **PUBLIC UTILITY** has the meaning provided in Wis. Stat. § 196.01(5).
  - (p) **REGISTRANT** means any person who seeks to obstruct or occupy a right-of-way with a permanent or semi-permanent facility or facilities.
  - (q) **REPAIR** means to perform work necessary to make the right-of-way useable for travel, according to department specifications, or to return facilities to a condition that is in as good or a better condition as the facilities were before the work commenced.
  - (r) **RIGHT-OF-WAY** means the surface and space above and below a public roadway, highway, street, bicycle lane, landscape terrace, shoulders, side slopes, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes.
  - (s) **RIGHT-OF-WAY USER** means a person obstructing and/or occupying the right-of-way, or seeking to obstruct and/or occupy the right-of-way.
  - (t) **SERVICE or UTILITY SERVICE** includes services such as municipal sewer and water services and services provided by a Public Utility or a Company subject to § 182.017, Wis. Stat., and other similar services.
  - (u) **UNUSABLE FACILITIES** means facilities in the right-of-way which have remained unused for one (1) year and for which the registrant is unable to provide proof that it has either a plan to begin using them within the next twelve (12) months or has a potential purchaser or user of the facilities, with said purchase or use to occur in the next twelve months.
- (2) **ADMINISTRATION.** The Department is responsible for the administration of the right-of-way.
- (3) **REGISTRATION.** A person who owns, leases or subleases facilities which occupy or obstruct the

right-of-way shall register with the Department and pay the fee on file with the Department. No person shall construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered. Nothing herein shall be construed to repeal or amend the provisions of any City ordinances requiring persons to plant or maintain the tree lawn in the area of the right-of-way between their property and the street curb, construct sidewalks, install street signs or perform other similar activities. Persons performing such activities shall not be required to obtain a permit under this chapter, although a permit or permits may be required by another City ordinance.

- (a) Information required. The information provided to the Department at the time of registration shall include, but may not be limited to:
- a. Each registrant's name, Diggers Hotline registration certificate number, address, email address, telephone and facsimile numbers, in addition to the name, address, e-mail address, telephone and facsimile numbers of a local representative, if applicable.
  - b. A copy of the registrant's certificate of authority from PSCW or other applicable state or federal agency when the registrant is lawfully required to have such certificate.
  - c. Execution of an indemnification agreement in a form prescribed by the City.
  - d. Agreement by the registrant that the registration shall keep all of the information listed above current at all times by providing to the Department information as to changes within fifteen (15) business days following the date of any change.

(b) Registration fee.

- a. Annual registration fee. Each registrant shall annually renew its registration. The Department shall establish the registration fee in an amount sufficient to recover the costs incurred by the City for processing registrants. This fee shall be computed as the average of labor costs, indirect costs, and other costs associated with registration unless otherwise regulated by law, in which case the lesser amount shall apply.
- b. Fee computation. The Department may recalculate and establish a new registration fee each year as permitted by law and ordinance and said fee shall

be on file with the Department.

- (4) PERMIT. Except as otherwise provided in this chapter or other City ordinance, no person shall obstruct or occupy a right-of-way or place a facility in a right-of-way without first having obtained a permit from the Department. This permit is separate and distinct from the registration requirement. No person shall obstruct or occupy a right-of-way beyond the date specified in the permit. The permit must be made available at all times by the Permittee at the work site or be available for inspection by the Department inspector immediately upon request.

- (a) Permit application. Applications for a permit shall be available from the Department and made to the Department. Permit applications shall contain, and will be considered complete, only upon compliance with the requirements of the following provisions:

- a. Proof of registration as required by this chapter;
- b. Submission of a completed permit application form, including scaled drawings.
- c. The applicant shall identify in detail the location of the proposed project and any affected right-of-way, public utility easements, and the location of all existing and proposed facilities within the project area in addition to installation details, traffic control plans and other details requested by the Department.
- d. If the proposed project involves the installation of a pole or tower in the right-of-way, the applicant may be required to submit evidence sufficient to demonstrate that the applicant is prohibited from using an existing pole or tower (either owned by the applicant or a third-party) because such use is technically infeasible, economically prohibitive, or prohibited by law.
- e. A signed statement that the applicant and registrant will comply with all local, state, and federal codes including, but not limited to, safety, building, traffic control codes, and the Manual of Uniform Traffic Control Devices (MUTCD).
- f. If the proposed project involves the installation of a pole or tower in the right-of-way that is greater than ten (10) feet taller than existing poles or towers in nearby right-of-way, the applicant may be required to submit to the Department evidence sufficient to demonstrate that:
  1. the greater height is required to accomplish the applicant's purposes;



2. the applicant is prohibited from using existing poles or towers (either owned by applicant or a third party) to accomplish its purposes because such use is technically infeasible, economically prohibitive, or prohibited by law; and
3. the pole or tower, due to its height and size, poses no greater danger to the health, safety, and welfare of the public than existing poles in nearby right-of-way.
- (b) Payment. Prior to a permit application being considered for approved, the applicant will be responsible for the full payment for the following:
- Applicable fees and costs as set forth in this chapter;
  - Unpaid fees or costs due by the applicant, registrant, and local representative to the City; and
  - Any loss, damage, or expense suffered by the City because of applicant, registrant and local representative's prior actions.
- (c) Insurance. Prior to a permit application being approved, the applicant must furnish to the City Clerk a certificate of liability insurance in the amounts required by the City, at minimum, with the City named as an additional insured. A copy of said minimum amounts shall be available from the City Clerk.
- (d) Bond. Prior to a permit application being approved, the applicant must post a permit bond in the amount of \$5,000, with said bond being valid for a minimum of one (1) year after the conclusion of the work described in the permit.
- (e) Permit fee. The permit fee shall be established by the Department and approved by the City Council in an amount sufficient to recover the costs incurred by the City. This fee shall recover costs incurred by the City for the following categories:
- Administrative: The general formula for computing the administrative fee shall be the average per-permit costs for labor plus indirect and other costs.
  - Repair: No repair fee shall be collected by the City. However, the
- permittee shall be required to repair the public right-of-way to Department specifications, subject to inspection and acceptance by the Department.
- (f) City exemption. The City shall not pay fees nor shall any person performing work in the right-of-way-pursuant to a contract with the City.
- (g) Fee computation. The Department may recalculate and establish a new fee structure each year, subject to the approval of the City Council.
- (h) Refunds. If a permit application is denied and the fee has already been paid, the City shall refund the fee within thirty (30) calendar days of the denial date. In the event the applicant decides to not use the permit, for any reason, but has already paid the permit fee, the permit fee shall not be refunded. Permit fees paid for a permit that the Department revoked for a breach of this chapter are not refundable.
- (5) WORK IN THE RIGHT-OF-WAY. Any work to be done under a permit, and the repair of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the Permittee or when work was prohibited as unseasonable or unreasonable. The Permittee shall perform repairs according to the specifications of the Department and in accordance with the conditions specified in the permit. The Department shall have the authority to prescribe the manner and extent of the repair and may do so in written procedures of general application or on a case-by-case basis.
- (a) Guarantees. The Permittee guarantees its work and shall maintain said work following its completion, except for organic material, for twelve (12) months. The Permittee shall, upon notification from the Department, correct all repair work to the extent necessary, using the method required by the Department. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Department, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable.
- (b) Failure to repair. If the Permittee fails to repair the right-of-way in the manner and to the condition required by the Department, or fails to satisfactorily and timely complete all repair required by the Department, the Department at its option may do such work, in which event the Permittee shall pay to the City, within thirty (30) calendar days of billing, the actual costs repairs.

Failure of the Permittee to repair as required under this chapter may result in the permit being revoked by the City. If the Permittee fails to pay as required, the City may exercise its rights under the bond and the Permittee shall be denied future permit applications until the payment in full has been received. Nothing contained in this section shall prohibit the City from using any reasonable means of collection.

- (6) **INSPECTION.** The Permittee shall notify the Department within one (1) business day of any work under this chapter is completed. The Permittee shall make the work site available to the Department inspector and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work. At the time of inspection, the Department inspector may order the immediate cessation of any work that poses a threat to the life, health, safety, or well-being of the public. The City may issue an order to the Registrant and/or Permittee for any work that does not conform to the applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) calendar days after issuance of the order, the Registrant or Permittee must present proof to the Department that the violation has been corrected. If such proof has not been presented within the required time, the Department may revoke the permit.
- (7) **FALL RADIUS BREAKAWAY REQUIREMENTS.** Poles and other utility structures over sixty (60) feet in height shall be located so that all residential, commercial, retail or other occupied buildings are outside the fall radius of the structure. Rigid non-breakaway poles and other utility structures shall be located a minimum of ten feet (10') from roadway curbs or shoulders and behind existing or future sidewalks.
- (8) **JOINT PERMIT APPLICATIONS.** Registrants who apply for permits for the same work, which the Department does not perform, may share in the payment of the permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.
- (9) **OTHER OBLIGATIONS.** Obtaining a permit to occupy or obstruct the right-of-way does not relieve a Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other City, County, State, or Federal rules, laws or regulations. A Permittee shall comply with all requirements of local, state, and federal laws. A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work. Except in an emergency, or with the approval of the Department, no right-of-way work may be done when seasonally prohibited or when conditions are

unreasonable for such work.

- (10) **REVOCATIONS, SUSPENSIONS, REFUSALS TO ISSUE OR EXTEND PERMITS.** The Department may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:
- a. Registration has not been completed or updated as required by this chapter;
  - b. The permit application is incomplete;
  - c. The Permittee is seeking to perform work not included in its plan submitted to the Department, which work was reasonably foreseeable by the Applicant or Permittee at the time said plan was filed;
  - d. Issuance of a permit for the requested date would or interfere with an exhibition, celebration, festival, or other event;
  - e. Misrepresentation of any fact by the Registrant, Applicant or Permittee;
  - f. Failure to maintain and provide proof of the required bonds and/or insurance;
  - g. Failure to complete work in a timely manner;
  - h. The proposed reason for the obstruction or occupation is contrary to the public health, safety or welfare;
  - i. The extent to which space is available in the right-of-way for which the permit is sought;
  - j. The availability of other more appropriate locations in the right-of-way or in other rights-of-way;
  - k. If the Applicant proposes to install a new pole or tower in the right-of-way, the availability of other existing poles or towers;
  - l. The applicability of ordinances or other regulations of the right-of-way that affect location of the proposed obstruction or occupation;
  - m. The condition of the right-of-way and or whether and when it is scheduled for total or partial reconstruction; and/or
  - n. The Registrant, Applicant or Permittee is otherwise not in full compliance with the requirements of this chapter or any other applicable law or regulation.
- (11) **DISCRETIONARY ISSUANCE.** Notwithstanding the above Section, the Department may issue a permit where issuance is necessary to prevent substantial economic hardship

to a customer of the Registrant or Applicant, to allow such customer to materially improve its Public Utility service, and/or to allow the Registrant or Applicant to comply with state or federal law or City ordinance or an order of a court or administrative agency.

- (12) **APPEALS.** The City shall approve or deny a permit application no later than sixty (60) calendar days after receipt of the application. If the City fails to act on the application within that period, the application shall be deemed granted and the City shall issue the permit. If the City denies a permit application, the City shall provide Applicant with a written explanation of the reason for the denial at the time the City denies the application. Any person aggrieved by a decision of the Department revoking, suspending, refusing to issue, or refusing to extend a permit may, within ten (10) calendar days of the Department's decision being issued, file a written request with the Department seeking a review of the decision by the City's Administrative Committee. Following a hearing, the Committee may affirm, reverse or modify the decision of the Department. The decision of the Administrative Committee is final.

(13) **WORK DONE WITHOUT A PERMIT.**

a. **Emergency Situations.** A Registrant or Permittee must immediately notify the City of any event regarding its facilities that it considers an emergency. The Registrant or Permittee may take whatever actions are necessary to respond to the emergency. Within two (2) business days after the emergency, the Registrant or Permittee must apply for the necessary permits, pay the fees associated therewith, and otherwise fully comply with the requirements of this Chapter. If the City becomes aware of an emergency regarding a Registrant's facilities, the Department will attempt to contact the Registrant and the Local Representative. The City may take whatever action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be borne by the Registrant whose obstruction/occupation occasioned the emergency.

b. **Non-Emergency Situations.** Except in an emergency situation, any person who, without first having obtained the necessary permit, obstructs or occupies a right-of-way must subsequently register and apply for a permit, and shall, in addition to any penalties prescribed by ordinance, pay four times the normal fee for said permit, pay double all other fees required by this chapter or other applicable chapters of the City code, deposit with the Department the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this chapter. If a subsequent permit is denied or is not approved, the Registrant shall discontinue and abandon the right-of-way and the Department may

cause any offending conditions to be removed or corrected and the expense thereof charged to the person responsible.

- (14) **SUPPLEMENTARY NOTIFICATION AND APPLICATION.** If obstruction or occupation in the right-of-way begins later or ends sooner than the date given on the permit, the Permittee shall notify the Department of the accurate information as soon as this information is known. A permit is valid only for the area of the right of way specified in the permit. Facilities must be installed/placed within eighteen inches (18") of the area shown on the approved permit. Any Permittee which determines that an area greater than that specified in the permit must be occupied or obstructed, before making said change must apply for a new permit and pay any additional fees required thereby, and be granted a new permit.

- (15) **CORRIDORS.** The Department may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of obstruction or occupation, including facilities, that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. Any Registrant who obstructs/occupies a right-of-way in a position at variance with the corridors established by the City shall, no later than at the time of the next reconstruction or excavation of the area where the obstruction/occupation is located, move the obstruction/occupation to the assigned position within the right-of-way, unless this requirement is waived by the City for good cause shown upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the Registrant.

- (16) **LIMITATION OF SPACE.** To protect health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the Department may prohibit or limit the placement of new, replacement or additional obstructions or occupations, including facilities, within the right-of-way if there is insufficient space to accommodate all of the requests of persons to occupy and use the right-of-way. In making such decisions, the Department shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

- (17) **RELOCATION.** Except as prohibited by State or Federal law, a Registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently relocate its facility located in the right-of-way whenever the Department requests such relocation, and shall restore the right-of-way to the same condition it was in prior to said relocation.

The Department may make such request to prevent interference by the Registrant's facility with (i) a present or future City use of the right-of-way, (ii) a public improvement undertaken by the City, (iii) when public health, safety and welfare require it, and/or (iv) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, relocation shall not be required in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefor.

- (18) **INTERFERENCE DURING MUNICIPAL CONSTRUCTION.** When the City performs work in the right-of-way and finds it necessary to maintain, support, shore, or move a Registrant's facilities, the City shall notify the Registrant and Local Representative. The Registrant and/or Local Representative shall meet with the Department inspector within 24-hours of a request by the Department inspector to coordinate the protection, maintenance, supporting, and/or shoring of the Registrant's facilities. The Registrant and/or Local Representative or designee shall accomplish the needed work within 72 hours, unless the City agrees in writing to a longer period. In the event that the Registrant and/or Local Representative does not proceed to maintain, support, shore, or move its facilities, the City may arrange to do the work and bill the Registrant and Local Representative for costs it incurs as well as damages of \$100 per day beyond the 72 hour deadline to accomplish the needed work, with said bill to be paid within thirty (30) days or the permit may be revoked and collection actions may take place.

- (19) **INDEMNIFICATION.** By registering with the City, or by accepting a permit under this Chapter, the Registrant, Local Representative, Applicant and Permittee, and all agents, contractors, employees, officers or other designees thereof, agrees to indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents (collective, "Indemnified Parties"), from and against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon an Indemnified Party for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the permittee's acts or omissions in the exercise of its rights under this permit, whether caused by or contributed to by the City or its agents or employees except in such cases where caused by the sole negligence or willful misconduct of the City.

- (20) **ABANDONED FACILITIES.**

- (a) A Registrant who discontinues its operations in the City must, within seventy-two (72) hours of the discontinuation, either provide information

satisfactory to the Department that the Registrant's obligations for its facilities under this chapter have been lawfully assumed by another registrant; or submit to the Department a proposal and instruments for dedication of its facilities to the City. If a registrant proceeds under the latter clause, the City may, at its option: accept the dedication for all or a portion of the facilities; or require the Registrant, at its own expense, to remove the facilities in the right-of-way at ground or aboveground; or require the Registrant to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.

- (b) A Registrant who has unusable and abandoned facilities in any right-of-way shall remove it from the right-of-way within six (6) months, unless the Department waives this requirement.
- (c) Facilities of a Registrant that has been abandoned for more than six (6) consecutive months and remains unused shall be deemed to be abandoned. Abandoned facilities may be deemed by the City to be a nuisance. In addition to any remedies or rights it has at law or in equity, the City may, at its option, abate the nuisance pursuant to City ordinance and state statute, take possession of the facilities, and/or require removal of the facilities by the registrant, or the registrant's successor in interest.
- (d) This section shall not apply to a Public Utility that is required to follow the provisions of § 196.81, Wis. Stat. (2462 07/25/2017)

- 8.17 PENALTY.** The penalty for violation of any provision of this chapter shall be a penalty as provided in §25.04 of this Code. A separate offense shall be deemed committed on each day on which a violation of this chapter occurs or continues.